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Bruce Bannister, Marsha Johns, and
Jonathan Perry*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ADAM WYNN TINGLEY,

Plaintiff,

vs.

NEVADA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Case No. 3:14-cv-00358-MMD-VPC

**ANSWER TO AMENDED COMPLAINT
(Jury Demand)**

Defendants, Romeo Aranas, Bruce Bannister, Marsha Johns, and Jonathan Perry, by and through counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Benjamin R. Johnson, Deputy Attorney General, hereby answer Plaintiff's Amended Civil Rights Complaint (#43) as follows:

A. JURISDICTION

1. Defendants admit Plaintiff Adam Wynn Tingley (hereinafter "Plaintiff") is presently incarcerated at Warm Springs Correctional Center ("WSCC") in Carson City, Nevada. Defendants deny Plaintiff's civil rights were violated at any time or in any manner.

2. Defendants admit that Dr. Bruce Bannister was employed by the Nevada Department of Corrections ("NDOC") as Medical Director. Defendants deny any and all remaining allegations in this paragraph.

1 3. Defendants admit that Dr. Romeo Aranas is employed by the Nevada
2 Department of Corrections ("NDOC") as Medical Director. Defendants deny any and all
3 remaining allegations in this paragraph.

4 4. Defendants admit that Jonathan Perry is employed by the Nevada Department
5 of Corrections ("NDOC") as Director of Nursing at Northern Nevada Correctional Center
6 ("NNCC"). Defendants deny any and all remaining allegations in this paragraph.

7 5. The identity of defendant Jane Doe #1 has not been identified and this party is
8 not represented by the Attorney General's Office and therefore no response is required. To
9 the extent a response is required, Defendants deny any and all allegations in this paragraph.

10 6. The identity of defendant John or Jane Doe #1 has not been identified and this
11 party is not represented by the Attorney General's Office and therefore no response is
12 required. To the extent a response is required, Defendants deny any and all allegations in this
13 paragraph.

14 7. Defendants admit that Dr. Marsha Johns is employed by the Nevada
15 Department of Corrections ("NDOC") as a medical doctor at Northern Nevada Correctional
16 Center ("NNCC"). Defendants deny any and all remaining allegations in this paragraph.

17 8. The identity of defendant John or Jane Doe #1 Bookkeeper has not been
18 identified and this party is not represented by the Attorney General's Office and therefore no
19 response is required. To the extent a response is required, Defendants deny any and all
20 allegations in this paragraph.

21 9. Defendants admit that this court has jurisdiction pursuant to 28 U.S.C. §
22 1343(a)(3) and 42 U.S.C. § 1983. Defendants deny that jurisdiction is proper on any other
23 basis.

24 **B. NATURE OF THE CASE**

25 1. Defendants are without sufficient knowledge or belief to admit or deny the
26 matters asserted in the Nature of the Case" section on page 3 and therefore deny any and all
27 allegations in this paragraph.

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1 **C. CAUSE OF ACTION**

2 **COUNT I: DENY**

3 Defendants admit Plaintiff has rights under the Eighth Amendment of the United States
4 Constitution. Defendants deny those rights, or any right owed to Plaintiff was violated at any
5 time or in any manner. Defendants deny any and all other allegations set forth in this
6 paragraph.

7 **SUPPORTING FACTS:**

8 Defendants are without sufficient knowledge or belief to admit or deny the matters
9 asserted in Count I on page 4 and therefore deny any and all allegations in these paragraphs.

10 **COUNT II: DENY**

11 Defendants admit Plaintiff has rights under the Fourteenth Amendment of the United
12 States Constitution. Defendants deny those rights, or any right owed to Plaintiff was violated
13 at any time or in any manner. Defendants deny any and all other allegations set forth in this
14 paragraph.

15 **SUPPORTING FACTS:**

16 Defendants are without sufficient knowledge or belief to admit or deny the matters
17 asserted in Count II on page 7 and therefore deny any and all allegations in these paragraphs.

18 **D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF**

- 19 1. Defendants are without knowledge to admit or deny, and deny on that basis.
20 2. Defendants are without knowledge to admit or deny, and deny on that basis.
21 3. Defendants are without knowledge to admit or deny, and deny on that basis.

22 **E. REQUEST FOR RELIEF**

23 Defendants deny Plaintiff is entitled to any of the relief sought in the Amended
24 Complaint at page 10.

25 **F. ADDITIONAL ALLEGATIONS**

26 Furthermore, as to any remaining allegations contained in the Amended Complaint in
27 Exhibit A on pages 11-13, not specifically admitted or denied hereinabove, these Defendants
28 hereby deny all such allegations.

1 **G. AFFIRMATIVE DEFENSES**

2 Defendants, individually and collectively, also assert the following Affirmative Defenses:

3 1. The Amended Complaint fails to state a claim upon which relief can be granted.

4 2. Defendants were not personally involved in the cause in fact and/or the
5 proximate cause of the alleged constitutional deprivations.

6 3. This action is time-barred by applicable statutes of limitations.

7 4. Defendants at all relevant times acted in good faith toward Plaintiff, therefore,
8 Defendants are entitled to qualified good faith immunity from damages.

9 5. Defendants are entitled to qualified and absolute immunity.

10 6. At all relevant times herein, Defendants acted in accordance with applicable law
11 and prison procedures that are constitutionally required.

12 7. Plaintiff failed to state a cognizable constitutional claim under 28 U.S.C. § 1343
13 (a)(3) and 42 U.S.C. §1983.

14 8. Plaintiff failed to mitigate damages, if any, and therefore, is barred from seeking
15 any damages hereunder.

16 9. Plaintiff was himself negligent in his conduct and such negligence is the sole,
17 primary and superseding cause of any damages sustained by him, if any.

18 10. Plaintiff's punitive damage claims are barred by law.

19 11. Defendants are immune from liability because the acts complained of were
20 discretionary in nature or were performed while carrying out a statute or regulation.

21 12. At all-time relevant, Defendants held a good faith belief that they were acting
22 reasonably and that their actions were privileged and legally justified.

23 13. Plaintiff failed to exhaust administrative remedies as required by the Prison
24 Litigation Reform Act.

25 14. Plaintiff's conduct constitutes a waiver of any alleged wrongful conduct
26 undertaken by the answering defendants.

27 15. Plaintiff's conduct ratified any alleged wrongful conduct by the answering
28 defendants.

1 16. Defendants are immune from liability as a matter of law.

2 17. Defendants reserve the right to amend their reply to allege additional affirmative
3 defense if subsequent discovery so warrants.

4 18. The negligence of Plaintiff caused or contributed to any injuries or damages
5 which Plaintiff may have sustained, and the negligence of these defendants, if any, requires
6 that the damages of Plaintiff be denied or diminished in proportion to the amount of
7 negligence attributable to Plaintiff.

8 19. Defendants cannot be sued for monetary damages while acting in their official
9 capacity in a civil rights action.

10 20. Plaintiff is estopped from pursuing any claim against defendants in accordance
11 with equitable principles of jurisprudence.

12 21. The doctrines of res judicata and/or collateral estoppel bar Plaintiff from
13 asserting the matters set forth in his Amended Complaint and also acts as a bar to any relief
14 sought by Plaintiff.

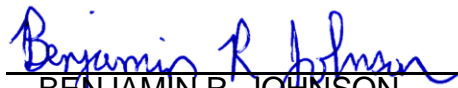
15 WHEREFORE, Defendants pray for relief as follows:

- 16 1. That Plaintiff takes nothing by virtue of his Amended Complaint;
17 2. For attorney fees and costs of suit herein.
18 3. A jury trial is hereby demanded by Defendants.

19 DATED this 28th day of May, 2015.

20 ADAM PAUL LAXALT
21 Attorney General

22 By:



23 BENJAMIN R. JOHNSON
24 Deputy Attorney General
Bureau of Litigation
Public Safety Division

25 *Attorneys for Defendants*
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 28th day of May, 2015 I caused to be deposited for mailing, a true and correct copy of the foregoing, **ANSWER TO AMENDED COMPLAINT (Jury Demand)**, to the following:

ADAM WYNN TINGLEY #80020
WARM SPRINGS CORRECTIONAL CENTER
P O BOX 7007
CARSON CITY, NV 89702


An employee of the
Office of the Attorney General